

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

LEVEL 3 COMMUNICATIONS, LLC,
Plaintiff,
v.
K.J. WOODS CONSTRUCTION, INC.,
Defendant.

Case No. 15-cv-03268-LB

**ORDER (1) ALLOWING PLAINTIFF
TO SERVE DEFENDANT VIA THE
SECRETARY OF STATE, (2)
EXTENDING THE DEADLINE BY
WHICH PLAINTIFF MUST SERVE
DEFENDANT, AND (3) CONTINUING
THE CASE MANAGEMENT
CONFERENCE**

Re: ECF Nos. 14, 15

Level 3 Communications, LLC (“Level 3”) sued K.J. Woods Construction Inc. (“KJN”) but so far has been unable to serve it with the complaint and summons. Level 3 moves for permission to serve KJN via the California Secretary of State. (Motion 1, ECF No. 15.) It also moves to extend its deadline for doing so. (Motion 2, ECF No. 14.) The court grants both motions.

Rule 4(h)(1)(A) of the Federal Rules of Civil Procedure provides that service on a corporation may be made in the manner prescribed by Rule 4(e)(1). Rule 4(e)(1), in turn, authorizes service in any manner permitted by the state where the district court is located. California Code of Civil Procedure § 416.10 provides that a corporation may be served by the procedures set forth in California Corporations Code § 1702. California Corporations Code § 1702 provides that if a plaintiff is unable, with reasonable diligence, to serve a corporation by other methods for serving a

ORDER (No. 3:15-cv-03268-LB)

1 corporation under California law,

2 the court may make an order that the service be made upon the corporation by
3 delivering by hand to the Secretary of State, or to any person employed in the
4 Secretary of State's office in the capacity of assistant or deputy, one copy of the
5 process for each defendant to be served, together with a copy of the order
6 authorizing such service. Service in this manner is deemed complete on the 10th
7 day after delivery of the process to the Secretary of State.

8 Level 3 submitted an affidavit describing its efforts to find and serve KJW. (Proszek Affidavit,
9 ECF No. 15-1.) Level 3's process server made multiple attempts to serve KJN at the address
10 registered with the California Secretary of State, provided to the California Contractors State
11 License Board, and which was on the letterhead of a letter that KJN sent to Level 3. The office at
12 that address was always locked, and no one was ever there. Level 3 called the telephone number
13 listed on KJN's website, but no one answered, and no one responded to the voicemails left. Level
14 3 discovered a residential address related to KJN, and the process server made several attempts to
15 serve KJN there, but the process server eventually was informed that the individuals associated
16 with KJN had moved. Finally, Level 3 contacted the San Francisco Department of Public Works
17 to discover any other addresses, but the DPW had only those that Level 3 already tried.

18 Based on the affidavit submitted, the court finds that Level 3 has been unable to serve KJN
19 despite reasonable efforts to do so. Accordingly, the court grants Level 3's motion to allow it to
20 serve KJN pursuant to California Corporations Code § 1702(a). Once Level 3 does so, it must file
21 an executed summons and supporting affidavit showing that it served KJN in this manner.

22 In light of this process, the court also extends the deadline for Level 3 to serve KJN to
23 February 2, 2016 and continues the initial case management conference from December 10, 2015
24 to February 18, 2016 at 11:00 a.m. in Courtroom C.

25 **IT IS SO ORDERED.**

26 Dated: December 4, 2015



27 LAUREL BEELER
28 United States Magistrate Judge